

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/758,065
Inventor(s) : Joseph Kitching et al.
Filed : January 15, 2004
Art Unit : 3761
Examiner : Michael E. Butler
Docket No. : 9149Q
Confirmation No. : 5113
Customer No. : 27752
Title : Wipe Dispensing System

REVISED APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This revised Brief is filed pursuant to the Notice of Non-Compliance mailed on April 1, 2009 and to the appeal from the decision communicated in the Office Action mailed on August 7, 2008.

A timely Notice of Appeal was filed on December 8, 2008.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1, 5, 7, 8, 9, 12, 13, 15 and 16 are rejected under 35 U.S.C. §102(b) as anticipated by Huen, U.S. Patent No. 5,240,140.

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Claims 1-5, 8-9, 13-18 and 20 are rejected under 35 U.S.C. §102(b) as anticipated by Gergek, U.S. Publication No. 2002/0033405A1.

Claims 1, 3-4, 7-10, 15-18 are rejected under 35 U.S.C. §102(b) as anticipated by West, U.S. Patent No. 2,440,993.

Claims 1, 3-5, 7-10 and 15-18 are rejected under 35 U.S.C. §102(b) as anticipated by or in the alternative, under 35 U.S.C. 103(a) as obvious over West, U.S. Patent No. 2,440,993.

Claims 1, 5-6, 15-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Washington et al., U.S. Patent No. 6,976,634 in view of Winkler, U.S. Patent No. 4,877,230.

Claims 1 to 20 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed following the Office Action of August 7, 2008.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1 recites a container (10) for dispensing product in sheet form (40) comprising said product in sheet form (40) which will be dispensed. Page 5, lines 11-15. The product in sheet form comprises a substrate that releasably carries a composition of matter. Page 16, lines 12-19. The container includes a dispensing aperture for product in sheet form, the aperture having opposing lateral edges (30, 35). Page 5, lines 29-30. At least one of the lateral edges includes a rotatable roller, the lateral edges providing a nip passage for controllably dispensing said product in sheet form in a non-downwards direction. Page 4, lines 27-29 and Page 7, lines 21-27.

Independent Claim 7 also recites a container (10) for dispensing product in sheet form (40). The container includes a product in sheet form (40) that comprises a substrate that releasably carries a composition of matter. Page 16, lines 12-19. The container

further includes walls (60, 70, 80, 90 and 100) defining an inner cavity (42) for storing the product in sheet form prior to dispensing. Page 5, lines 11-15.

Independent Claim 15 also recites a container (10) for dispensing product in sheet form (40). The container includes a product in sheet form (40) that comprises a substrate that releasably carries a composition of matter. Page 16, lines 12-19. The container includes walls (60, 70, 80, 90 and 100) where one of the walls is a deck panel (50) which includes a sealing section (55). Page 5, lines 29-34. The container includes a lid (20) hingedly in association with one of the walls and which is closely overlying the sealing section. Figures 1, 4 and 6 *inter alia*.

GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

- I. Rejection of Claims 1, 5, 7, 8, 9, 12, 13, 15 and 16 under 35 U.S.C. §102(b) as anticipated by Huen, U.S. Patent No. 5,240,140.

Whether Huen describes, expressly or inherently, a container including a product in sheet form comprising a substrate that releasably carries a composition of matter.

- II. Rejection of Claims 1-5, 8-9, 13-18 and 20 under 35 U.S.C. §102(b) as anticipated by Gergek, U.S. Publication No. 2002/0033405A1.

Whether Gergek describes, expressly or inherently, a container including a product in sheet form comprising a substrate that releasably carries a composition of matter.

- III. Rejection of Claims 1, 3-4, 7-10, 15-18 under 35 U.S.C. §102(b) as anticipated by West, U.S. Patent No. 2,440,993.

Whether West describes, expressly or inherently, a container including a product in sheet form comprising a substrate that releasably carries a composition of matter.

- IV. Rejection of Claims 1, 3-4, 7-10, 15-18 under 35 U.S.C. §102(b) as anticipated by or in the alternative, under 35 U.S.C. 103(a) as obvious over West, U.S. Patent No. 2,440,993.

Whether West describes, expressly or inherently, a container including a product in sheet form comprising a substrate that releasably carries a composition of matter.

- V. Rejection of Claims 1, 5-6, 15-16 and 18-20 under 35 U.S.C. 103(a) as being unpatentable over Washington et al., U.S. Patent No. 6,976,634 in view of Winkler, U.S. Patent No. 4,877,230.

Whether Washington or Winkler describe, expressly or inherently, a container including a product in sheet form comprising a substrate that releasably carries a composition of matter.

ARGUMENTS

- I. Rejection of Claims 1, 5, 7, 8, 9, 12, 13, 15 and 16 under 35 U.S.C. §102(b) as anticipated by Huen, U.S. Patent No. 5,240,140.

The rejections of independent claims 1, 7 and 15 (and by way of dependency claims 5, 7-9, 12, 13 and 15) under 35 U.S.C. §102(b) over Huen are appealed because Huen does not anticipate the claims.

Applicants respectfully remind the Office that independent claims 1, 7 and 15 are all directed to a container that includes, *inter alia*, a product in sheet form comprising a substrate that releasably carries a composition of matter.

The written description discloses that:

The term "product in sheet form" means a web or substrate which releasably carries a composition of matter. The term "releasably carries" means that the composition is contained in and/or on a web or substrate and is readily releasable from the web or substrate by applying some force to the web or substrate, such as, wringing the substrate, or wiping a surface, such as a counter, child or floor, with the substrate.

(See page 16, line 14-18 of the specification). In the Final Office Action dated August 7, 2008, the Office took the position that:

The invention is the dispenser. Applicant's previous amendment was directed at narrowing the dispensate that is capable of being dispensed, rather than narrowing the scope of the dispenser. The dispenser is capable of dispensing a sheet if a releasable agent is added to the sheet. There is nothing within the current specified references and combinations that would create any difficulty in dispensing a dispensate with the added feature of releasing a composition of matter from a substrate. Applicant needs distinguish his dispenser from the prior art premised upon structural elements in the dispenser, not merely by selecting a sheet having additional post dispensing features.

(Emphasis added). (See Paragraph 9 of the Final Office Action dated August 7, 2008).

Applicants respectfully disagree with the Office's characterization of the scope of independent claims 1, 7 and 15. It is well-settled patent law that:

Finally, when evaluating the scope of a claim, every limitation in the claim must be considered. Office personnel may not dissect a claimed invention into discrete elements in isolation. Instead, the claim as a whole must be considered.

(Emphasis added). (See MPEP § 2106 II. C. citing *Diamond v. Diehr*, 450 U.S. 170 at 188-189, 209 USPQ 1 at 9. It is Applicants' position that the Office made a clear legal error by not fully considering all the features of independent claims 1, 7 and 15.

Applicants respectfully remind the Office that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Since Huen does not teach or even remotely suggest a container that includes a product in sheet form comprising a substrate that releasably carries a composition of matter, it is Applicants' position that the Office has failed to establish a prima facie case of anticipation and the rejection of independent claims 1, 7 and 15 (and by way of dependency claims 5, 7-9, 12, 13 and 15) under 35 U.S.C. §102(b) over Huen is improper.

II. Rejection of Claims 1-5, 8-9, 13-18 and 20 under 35 U.S.C. §102(b) as anticipated by Gergek, U.S. Publication No. 2002/0033405A1.

For the sake of brevity, Applicants submit that since Gergek does not teach or even remotely suggest a container that includes a product in sheet form comprising a substrate that releasably carries a composition of matter, it is Applicants' position that the

Office has failed to establish a *prima facie* case of anticipation and the Claims 1-5, 8-9, 13-18 and 20 under 35 U.S.C. §102(b) as anticipated by Gergek is improper.

III. Rejection of Claims 1, 3-4, 7-10, 15-18 under 35 U.S.C. §102(b) as anticipated by West, U.S. Patent No. 2,440,993.

For the sake of brevity, Applicants submit that since West does not teach or even remotely suggest a container that includes a product in sheet form comprising a substrate that releasably carries a composition of matter, it is Applicants' position that the Office has failed to establish a *prima facie* case of anticipation and the Claims 1, 3-4, 7-10, 15-18 under 35 U.S.C. §102(b) as anticipated by West is improper.

IV. Rejection of Claims 1, 3-5, 7-10, 15-18 under 35 U.S.C. §102(b) as anticipated by or in the alternative, under 35 U.S.C. 103(a) as obvious over West, U.S. Patent No. 2,440,993.

For the sake of brevity, Applicants submit that since West does not teach or even remotely suggest a container that includes a product in sheet form comprising a substrate that releasably carries a composition of matter, it is Applicants' position that the Office has failed to establish a *prima facie* case of anticipation and the rejection Claims 1, 3-4, 7-10, 15-18 under 35 U.S.C. §102(b) as anticipated by West is improper.

In addition, Applicants submit that the Office bears the initial burden to establish that the claim as a whole is *prima facie* obvious. Applicants submit that the Office did not provide any legal analysis whatsoever showing that any of the claims are *prima facie* obvious. It is therefore Applicants' position that the Office has failed to establish a *prima facie* case of obviousness and the rejection Claims 1, 3-5, 7-10, 15-18 under 35 U.S.C. 103(a) as obvious over West is improper.

V. Rejection of Claims 1, 5-6, 15-16 and 18-20 under 35 U.S.C. 103(a) as being unpatentable over Washington et al., U.S. Patent No. 6,976,634 in view of Winkler, U.S. Patent No. 4,877,230.

The rejections of independent claims 1 and 15 (and by way of dependency claims 5-6, 16 and 18-20) under 35 U.S.C. 103(a) as being unpatentable over Washington et al., U.S. Patent No. 6,976,634 in view of Winkler, U.S. Patent No. 4,877,230 are appealed because these references do not teach alone or in combination all the features found in independent claims 1 and 15.

At the outset, Applicants reminds the Office that the Supreme Court in KSR, reiterated the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (A) Determining the scope and contents of the prior art; and
- (B) Ascertaining the differences between the claimed invention and the prior art; and
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary consideration.

Applicants submit that the ground of rejections of independent claims 1 and 15 presented at paragraph 8 of Final Office Action dated August 7, 2008, are merely conclusory without any analysis of the differences between the claimed invention and the prior art. Applicants remind the Office that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). It is therefore Applicants’ position that the Office made a clear legal error by not applying the objective analysis for determining obviousness under 35 U.S.C. 103 as stated in *Graham v. John Deere Co.*, Id.

In addition, Applicants remind the Office that independent claims 1 and 15 are directed to a container that includes, *inter alia*, a product in sheet form comprising a substrate that releasably carries a composition of matter. Applicants submit that neither Washington et al., U.S. Patent No. 6,976,634 nor Winkler, U.S. Patent No. 4,877,230 teach or even remotely suggest a container including a product in sheet form comprising a substrate that releasably carries a composition of matter. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*,

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424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); Since none of the reference applied in the rejection teach the features of a container including a product in sheet form comprising a substrate that releasably carries a composition of matter, it is Applicants’ position that the Office has failed to establish a *prima facie* case of obviousness.

SUMMARY

In view of all of the above, it is respectfully submitted that the rejections of Claims 1-20 under 35 U.S.C. §102(b) as being anticipated by Huen, U.S. Patent No. 5,240,140, Gergek, U.S. Publication No. 2002/0033405A1 or West, U.S. Patent No. 2,440,993, or under 35 U.S.C. §103(a) as being unpatentable over Washington et al., U.S. Patent No. 6,976,634 in view of Winkler, U.S. Patent No. 4,877,230. are erroneous. Reversal of the rejections is therefore respectfully requested.

Respectfully submitted,
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(Appeal Brief.doc)
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CLAIMS APPENDIX

1. A container for dispensing product in sheet form comprising:
 - (i) said product in sheet form which will be dispensed wherein said product in sheet form comprises a substrate that releasably carries a composition of matter; and
 - (ii) a dispensing aperture for product in sheet form, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form in a non-downwards direction.
2. The container according to Claim 1 wherein substrate is continuous and is divided by a plurality of multiple lines of frangibility running at predetermined intervals substantially transversely to the major axis of the web and defining a plurality of individual wipes.
3. The container according to Claim 1 wherein substrate forms a plurality of discrete individual wipes which are interleaved.
4. The container according to Claim 1 wherein both of said lateral edges comprise rotatable rollers.
5. The container according to Claim 1 wherein said lateral edges comprise a material, wherein said material is selected from the group consisting of plastic, metal, composite materials and combinations thereof.
6. The container according to Claim 1 wherein both of said lateral edges comprise a rotatable roller said rotatable roller comprising a metal core surrounded by a plastic coating which contacts product in sheet form.
7. A container for dispensing a product in sheet form, said container comprising:

(a) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing;

(b) a dispensing aperture in one of said walls, said aperture leading from said inner cavity to the environment external to said container, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form; and

(c) a product in sheet form comprising a substrate that releasably carries a composition of matter.

8. The container according to Claim 7 wherein both of said lateral edges comprise rotatable rollers.

9. The container according to Claim 7 wherein said container is either rigid or semi-rigid.

10. The container according to Claim 7 wherein said product in sheet form is a plurality of discrete individual wipes which are interleaved.

11. The container according to Claim 7 further comprising:

(c) a closure, said closure being in association with one of said walls, said closure sealingly covering said aperture and said lateral edges when in the closed position.

12. The container according to Claim 11 wherein said closure (c) is either a lid or a resealable label.

13. The container according to Claim 7 further comprising:

(d) a motor connected to said rotatable roller; and

(e) optionally, a sensor connected to said motor, which upon activation of said sensor, said sensor activates said motor sufficient to turn said rotatable roller to dispense a predetermined quantity of said product in sheet form.

14. The container according to Claim 13 wherein said sensor is selected from the group consisting of light sensors, motion sensors, sound sensors, proximity sensors, travel sensors, rotation sensors, translation sensors, and combinations thereof.

15. A container for dispensing a product in sheet form, said container comprising:

(A) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing and one of said walls is a deck panel which includes a sealing section;

(B) a dispensing aperture in said sealing section, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form;

(C) a lid hingedly in association with one of said walls, said lid being closably overlying said sealing section; and

(D) a product in sheet form comprising a substrate that releasably carries a composition of matter.

16. The container according to Claim 15 wherein said container body is rigid.

17. The container according to Claim 15 wherein said product in sheet form is a plurality of discrete individual wipes which are interleaved.

18. The container according to Claim 15 wherein both of said lateral edges comprises rotatable rollers.

19. The container according to Claim 18 wherein said wherein said rotatable rollers comprise a metal core surrounded by a plastic coating which contacts said product in sheet form.

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20. The container according to Claim 15 further comprising:

(E) a motor connected to said rotatable rotor; and

(F) a sensor connected to said motor, which upon activation of said sensor, said sensor activates said motor sufficient to turn said rotatable roller to dispense a predetermined quantity of said product in sheet form.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.